TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 225.

JOHN F. BAILEY, ASSIGNEE OF BENJAMIN GLOVER, A BANKRUPT, APPELLANT,

vs.

HUGH WEIR, NATHANIEL B. GLOVER, AND ELENORA GLOVER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED OCTORER 11, 1873.

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1 *Bill.*

UNITED STATES OF AMERICA,
Southern district of Alabama:

To the judges of the circuit court of the United States for the southern district of Alabama:

John F. Bailey, of the city and county of Mongomery, and a citizen of the State of Alabama, and who is assignee in bankruptcy of Benjamin Glover, (now deceased,) brings this his bill against Nathaniel T. Glover, of Wilcox County, Alabama, and a citizen of the State of Alabama, residing within the southern district of Alabama, and Elenora Glover, of Wilcox County, Alabama, and a citizen of the State of Alabama, residing within the southern district of Alabama, and Hugh Weir, of Wilcox County, Alabama, and a citizen of the State of Alabama, residing within the southern district of Alabama, and thereupon your orator complains and says:

1. First. That Benjamin Glover, late of Wilcox County, in the State of Alabama, now deceased, was justly indebted to John A. Winston and Joel W. Jones, merchants and partners in trade under the name and firm of John A. Winston & Co., in the sum of ten thousand five hundred dollars, on a certain bill of exchange for the said sum
2 of money, drawn by one M. W. Creagh on the said Benjamin Glover and one Philip D. Forniss, and accepted the said Benjamin Glover and Philip D. Forniss, which bill of exchange was drawn and dated on the 21st day of June, 1861, and payable on the first day of January, 1864, to the said John A. Winston & Co., and was delivered to them, the said John A. Winston & Co.

2. Second. That afterwards the said John A. Winston & Co., for a valuable consideration, indorsed and delivered the said bill of exchange to one Gertrude Jones, and the said bill of exchange not being paid at maturity, the said Gertrude Jones afterwards brought suit thereon against the said Benjamin Glover in the circuit court of Wilcox County, Alabama, and in said suit the said Gertrude Jones recovered and obtained a judgment in said court at the fall term, 1867, of said court, against the said Benjamin Glover for sum of thirteen thousand five hundred and eighty dollars, besides also for costs, as will appear by the record of said suit and the proceedings therein in said circuit court, to which your orator prays leave to refer as may be required.

3 3. Third. That the said Gertrude Jones afterwards, for a valuable consideration, assigned and transferred the said judgment and the said bill of exchange to one William H. Winston, and the said William H. Winston afterwards, and before the filing of the petition in bankruptcy of said Benjamin Glover, hereinafter mentioned, for a valuable consideration, assigned and transferred the said judgment and bill of exchange to the said John A. Winston & Co.

4. Fourth. That before the assignment of the said judgment and bill of exchange to the said John A. Winston & Co. by the said William H. Winston there had been collected by the said Gertrude Jones or her assignee, the said William H. Winston, the sum of fourteen hundred and twenty-eight $\frac{92}{100}$ dollars on a judgment which the said Gertrude Jones had obtained against said M. W. Creagh, as drawer of said bill of exchange, so that when the said judgment against said Benjamin Glover was assigned to said John A. Winston & Co., as aforesaid, it was as to the said John A. Winston & Co. entitled to a credit for the said amount which had been collected as aforesaid on the said

judgment against said Creagh, and before and at the time when the said Benjamin Glover filed his petition in bankruptcy, as hereinafter mentioned, he was justly indebted to said John A. Winston & Co. to the amount of said judgment against him, with interest thereon less the credit aforesaid.

5. Fifth. That your orator is informed and believes, and so alleges and charges, that before and at the time when the said bill of exchange was accepted by the said Benjamin Glover, as aforesaid, and after suit was brought thereon against him by said Gertrude Jones, as aforesaid, he, the said Benjamin Glover, was a man of large fortune, and was possessed of a large quantity of lands in Wilcox County, Alabama, and elsewhere, of great value, and of personal property of great value, and of a large amount of money, greatly more than sufficient to pay off and satisfy said judgment against him, and any and all other debts (if there were any other debts) against him; that his property was of the value of at least fifty thousand dollars; that he owed no other debt but that on the said judgment against him; that he was not in fact insolvent, and was not in fact unable to pay his debts when he filed his petition in bankruptcy as hereinafter shown.

6. Sixth. That though the said Benjamin Glover was in fact possessed of a large amount of property, and was entirely solvent, and able to pay any and all debts against him as aforesaid, he determined to dispose of his property fraudulently, with intent to avoid the payment of the said judgment against him, and with the same fraudulent intent to apply for and fraudulently obtain a discharge in bankruptcy; and your orator is informed and believes, and so charges, that the said Benjamin Glover confessed and declared his said fraudulent intent to one Robert Baugh, of Atlanta, Georgia, and to divers other persons; and the said Nathaniel T. Glover, who is a son of the said Benjamin Glover and the said Elenora Glover, who was the wife of said Benjamin Glover, and the said Hugh Weir, who was the father-in-law of said Benjamin Glover, knowing the said fraudulent intent of said Benjamin Glover did combine and confederate with him, the said Benjamin Glover, to carry out his said fraudulent intent by receiving property and money from him, as hereinafter shown, with intent to prevent the same from being subjected to the payment of said judgment against him.

7. Seventh. That the said Benjamin Glover was seized and possessed of and well entitled to a certain plantation or tract of land situate in the county of Wilcox and State of Alabama, known and described as follows, to wit: The northwest quarter of section 21; the west half of the northeast quarter of section 21; the east half of the southeast quarter of section 20; the southwest quarter and southeast quarter of section 23; the north half of section 28; and the east half of the northeast quarter of section 33; all in township 15, of range six, containing twelve hundred and eighty acres, more or less; and being so seized and possessed, the said Benjamin Glover, in pursuance of his aforesaid fraudulent intent to delay, hinder, or prevent the collection or payment of said indebtedness on said judgment, did fraudulently convey or transfer the said plantation or tract of land, for a pretended or grossly inadequate consideration, to his son, the said Nathaniel T. Glover, who well knew of said fraudulent intent, and the said Benjamin did accordingly deliver possession thereof to the said Nathaniel T. Glover, who has ever since been, and is now, in possession thereof, taking the rents, issues, and profits thereof, and claiming title thereto.

8. Eighth. That the said Benjamin Glover, with like fraudulent in-

tent, did assign and deliver to the said Nathaniel T. Glover divers goods and chattels of great value, the particular character and description of which are unknown to your orator, and divers large sums of money, the particular amounts of which are unknown to your orator, and the same were accepted and received by the said Nathaniel T. Glover with a knowledge of the said fraudulent intent.

9. Ninth. That the said Benjamin Glover, being seized and possessed of a certain house and lot in the city of Atlanta and State of Georgia of great value, to wit, of the value of eight thousand dollars, did, with like fraudulent intent, convey the same to his father-in-law, the said Hugh Weir, for a pretended or grossly inadequate consideration, the said Weir well knowing at the time the said fraudulent intent.

10. Tenth. That shortly before the filing of the petition in bankruptcy by the said Benjamin Glover, hereinafter mentioned, the said Ben-
8 jamin having a large sum of money of his own, to wit, the sum of eight thousand dollars, he, the said Benjamin Glover, did, with like fraudulent intent to delay, hinder, or prevent the payment of his indebtedness on said judgment against him, transfer and deliver the said sum of money to the said Hugh Weir without any adequate consideration therefor, and the said Weir, well knowing the said fraudulent intent, did receive the said sum of money from said Benjamin Glover on a secret trust, to be held or used for the use and benefit of the said Benjamin Glover, or for the use and benefit of the said Elenora Glover, who was the wife of said Benjamin Glover and daughter of the said Weir.

11. Eleventh. That the said Benjamin Glover, at divers other times shortly before the filing of his said petition in bankruptcy, with like fraudulent intent, did transfer and deliver to the said Hugh Weir divers other sums of money and divers promissory notes, choses in action, claims, and credits belonging to him, the said Benjamin, the particular description and amounts of which are unknown to your orator, and the said Weir, well knowing said fraudulent intent, did fraudulently take and receive the same upon a secret trust, to hold the same for the
9 use and benefit of said Benjamin Glover, or for the use and benefit of the said Elenora Glover.

12. Twelfth. That the said Benjamin Glover, at divers times, shortly before the filing of his said petition in bankruptcy, with like fraudulent intent, and without any valuable consideration therefor, did assign, give, or deliver to his wife, the said Elenora, divers goods, chattels, promissory notes, claims, credits, and sums of money belonging to him, and of great value, the particular descriptions and amounts of which are unknown to your orator, and the said Elenora, with knowledge of said fraudulent intent, did take and receive the same, and still has the same or the proceeds thereof.

13. Thirteenth. That, in further execution of said fraudulent intent, the said Benjamin Glover, being at that time a citizen of the State of Alabama, residing in Wilcox County, Alabama, within the southern district of Alabama, did, on the 17th day of March, 1869, voluntarily file his petition in bankruptcy in the district court of the United States for the southern district of Alabama, under the provisions of the statutes of the United States in such cases made and provided, setting forth in effect that he was indebted to an amount exceeding three
10 hundred dollars and was unable to pay his debts in full, and praying to be discharged as a bankrupt, and did make and file with his said petition a schedule of his debts, in which schedule of his debts he stated and set forth the said judgment in favor of the said

Gertrude Jones as being the only debt he owed, and stating that the said John A. Winston & Co. claimed an interest in said judgment, and he did not state any other indebtedness, and he also made and filed with his said petition and schedules, purporting to be a schedule of all his property and effects, wherein he stated that he had no property or effects whatever except such as was by law exempt from the payment of his debts, which petition and schedules were sworn to by said Glover as required by law and the rules of said court; and on said petition such proceedings were had in and by said court that afterwards, to wit, on the first day of December, 1869, your orator was duly appointed assignee in bankruptcy of the property of said petitioner, and afterwards, to wit, on the 11th day of April, 1870, an order was made by said court for the discharge of the said petitioner as a bankrupt, all which
11 will more fully appear by reference to said petition and the proceedings thereon remaining of record in said district court, and to which your orator prays leave to refer as may be necessary.

14. Fourteenth. That the said John A. Winston & Co. made and filed in said case in bankruptcy in said district court due proof of their claim against said bankrupt on said judgment to the amount of twelve thousand one hundred and fifty-one $\frac{5}{100}$ dollars.

15. Fifteenth. That the said discharge of said Benjamin Glover in bankruptcy was in fact fraudulently obtained by reason of the fraudulent transfers of his property and effects hereinbefore set forth, and by his fraudulent failure and omission to set forth and state truly his property and effects in his schedule filed with his said petition.

16. Sixteenth. That the said Nathaniel T. Glover, Elenora Glover, and Hugh Weir severally had then and have now property and effects which were of said Benjamin Glover in their possession, respectively, liable to the payment of his said indebtedness, and they were and each of them was then justly indebted to him to a large amount.

17. Seventeenth. That afterwards, to wit, on the day of
12 December, 1871, the said John A. Winston died, and afterwards, to wit, on the 3d day of April, 1872, the said Joel W. Jones, as surviving partner of said firm of John A. Winston & Co., having received information ot some of the said fraudulent acts of said Benjamin Glover, filed his petition in said district court against said Benjamin Glover, stating said fraudulent acts and praying that said discharge of said Benjamin Glover might be set aside for fraud, upon which petition citation was duly issued against said Benjamin Glover in his lifetime, to wit, on the 10th day of April, 1872, and placed in the hands of the marshal to be executed, as will appear by reference to said petition and citation remaining in said district court, to which your orator prays leave to refer as may be necessary; but afterwards, and before said citation was executed, to wit, on the day of April, 1872, the said Benjamin Glover died, and no further proceedings have been had on said petition of said Joel W. Jones.

18. Eighteenth. That the said Benjamin Glover, Elenora Glover, Nathaniel T. Glover, and Hugh Weir kept secret their said fraudulent acts, and endeavored to conceal them from the knowledge o your orator
13 and of the said John A. Winston & Co., whereby your orator was prevented from obtaining any knowledge of the same until very recently, and within one year last past, and the said John A. Winston & Co. were also prevented, as your orator is informed and believes, from obtaining any sufficient knowledge or information thereof until shortly before the filing of the said petition of said Joel W. Jones, and within the last two years, and even up to the present time, your orator has not

been able to obtain full and particular information as to the fraudulent disposition made by said Benjamin Glover of a large part of his property; but from the large amount of property which the said Benjamin Glover is known to have possessed shortly before his filing his said petition in bankruptcy, and your orator's inability thus far to ascertain what disposition was made of a considerable portion of it, your orator believes, and so charges, that the said Benjamin Glover fraudulently disposed of considerable portions of his property to other persons whose names are unknown to your orator, and whom, when known, your orator prays leave to make parties defendant to this bill, with apt and proper words to charge them with such property.

14 To the end, therefore, that the said defendants, Nathaniel T. Glover, Elenora Glover, and Hugh Weir, all of whom are of full age and citizens of the State of Alabama, and reside in Wilcox County, Alabama, may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, be required full, true, direct, and perfect answer to make, according to the best and utmost of his or her knowledge, remembrance, information, and belief to each and all of the allegations of this bill and the following interrogatories; and, more particularly, that each of them may answer, discover, and set forth:

1st. Whether the said Benjamin Glover was or was not a man of considerable fortune and possessed of a large amount of property prior to his filing his petition in bankruptcy.

2nd. What was the character and value of his said property?

3rd. What property or money did the said defendants, or either of them, at any time receive or acquire from said Benjamin Glover?

4th. Whether the said defendants, or either of them, was or was not indebted to said Benjamin Glover and to what amount.

15 5th. Whether the said defendants, or either of them, did or did not receive from said Benjamin Glover any, and what, property or money to be held or used for the said Glover or of his wife.

And your orator further prays that it may please this honorable court to declare and decree that your orator, as assignee in bankruptcy as aforesaid, is entitled to the lands and other property herein mentioned, and to order said lands to be sold and the proceeds to be paid to your orator, as assignee as aforesaid, and to order accounts to be taken of any and all property or money received by the defendants, or either of them, from said Glover as aforesaid, and of any indebtedness of said defendants, or either of them, to said Glover, and to grant to your orator all such other and further relief in the premises as is consistent with equity and as his case may require.

May it please your honors to grant to your orator the United States writs of subpœna to be directed to the said Nathaniel T. Glover, Elenora Glover, and Hugh Weir, all of whom are of full age and reside in Wilcox County, Alabama, requiring them to appear and answer this bill according to the rules and practice of this court, &c.

16 And your orator will ever pray, &c.

WM. G. JONES,
BOYLES & AVERALL,
Sol'rs for Compl't.

NOTE.—Each of the defendants is required to answer each of the allegations of this bill, numbered from 1 to 18, inclusive, and each of the interrogatories numbered from 1 to 5, inclusive.

BOYLES & AVERALL.
WM. G. JONES.

I acknowledge myself as security for costs at the instance of the plaintiff.

JOEL W. JONES.

(Endorsed:) John F. Bailey, assignee, &c., vs. Nathaniel T. Glover, Elenora Glover, & Hugh Weir. Bill of complaint. Filed January 20th, A. D. 1873. N. W. Trimble, clerk.

17 *Summons in equity.*

Circuit court of the United States for the 5th circuit and southern district of Alabama.

JOHN F. BAILEY, ASSIGNEE, &C., *vs.* NATHANIEL T. GLOVER, ELENORA GLOVER, and Hugh Weir.

The President of the United States of America to the marshal of said district, or to either of his deputies, greeting:

You are hereby commanded to summon Nathaniel T. Glover, Elenora Glover, and Hugh Weir, who are citizens of Wilcox County, in the State of Alabama and in said southern district, to appear before the said circuit court on the first Monday of March next, (being the 3rd day of said month,) at the clerk's office in the custom-house building at Mobile, to plead to, answer, or demur to the bill of complaint of John F. Bailey, assignee of Benjamin Glover, (deceased,) a bankrupt, filed in said court on the 20th day of January, A. D. 1873, against you.

Herein fail not, and have you then and there this subpœna, with your doings thereon.

18 Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 4th Monday of December, A. D. 1872.

Issued January 23rd, A. D. 1873.

Attest: N. W. TRIMBLE,
Clerk of the Circuit Court of the U. S., 5th Circuit and Southern District of Alabama.

Defendants are required to enter their appearance in said suit in the clerk's office on or before the first Monday of March, A. D. 1873; otherwise the bill may be taken pro confesso.

N. W. TRIMBLE,
Clerk, &c.

Marshal's return.

Executed in full Feb. 5th, 1873.

R. W. HEALY, *Marshal.*
By DE F. RICHARDS, *Deputy.*

19 *Orders at rules.*

JOHN F. BAILEY, ASSIGNEE, *vs.* N. B. GLOVER, ELENORA GLOVER, ET ALS. — At rules, March 3d, 1873.

Taylor and Macartneys, solicitors for N. B. Glover, enter their appearance for said Glover and ask further time to the 1st Monday in April to plead, answer, or demur to said bill of complaint, which is granted.

N. W. TRIMBLE,
Clerk & Master.

Demurrer.

In the circuit court of the United States at Mobile, Alabama.

JOHN F. BAILEY, AS ASSIGNEE OF BENJAMIN Glover, complainant,
vs.
NATHANIEL T. GLOVER, ELENORA GLOVER, & Hugh Weir, defendants.
} In equity.

The demurrrer of Elenora W. Glover, in the bill of complaint called Elenora Glover, one of the defendants to the bill of complaint of John F. Bailey, as assignee of Benjamin Glover, against Nathaniel T. Glover, Hugh Weir, and this defendant, filed in equity in the circuit court of the United States at Mobile, Alabama, for the southern district of Alabama.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill of complaint, and for causes and grounds of demurrer sheweth:

1. First. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in said bill or any of said matters.

2. Second. That it appears by the complainant's own showing by his said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by his said bill against this defendant.

3. Third. That it appears by the complainant's own showing that the bill in this cause was not filed within two years from the time the said Benjamin Glover obtained his final discharge in bankruptcy.

4. Fourth. That the bill of complaint in this cause is filed by the assignee in bankruptcy of the said Benjamin Glover, and not by any of the creditors of the said Benjamin Glover.

5. Fifth. That the bill of complaint in this cause was filed after the expiration of more than two years from the time the said Benjamin Glover obtained his final discharge in bankruptcy, and after the death of the said Benjamin Glover.

6. Sixth. That said bill is multifarious in this, that said bill is exhibited against this defendant and Hugh Weir, together with one Nathaniel T. Glover as a co-defendant, for several and distinct and independent matters and causes, and wherein, or in the greater part thereof, this defendant is in no way interested or concerned, and ought not to be implicated.

7. Seventh. That said bill of complaint was not filed and said suit was not brought by said assignee within two years from the time the supposed cause of action accrued, as shown by said bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant does demur thereto, and prays the judgment of this honorable court whether she shall be compelled to make any further or other answer to the said bill, and she humbly prays to be hence dismissed, with her reasonable costs in this behalf sustained.

S. J. CUMMING,
Solicitor for the def't, Elenora W. Glover.

I, S. J. Cumming, one of the attorneys of said United States court,

and solicitor for the defendant, Elenora Glover, one of the parties to the foregoing cause of John F. Bailey, as assignee, &c., against Nathaniel T. Glover et al., now pending in equity in said United States circuit court, at Mobile, Ala., hereby certify that in my opinion the said grounds and causes of demurrer are well-founded in point of law, and that said demurrer is not interposed for delay.

S. J. CUMMING,
Solicitor of Elenora Glover, one of the Def'ts.

Before me, Brutus Howard, a justice of the peace in and for Wilcox County, Ala., this day personally came Elenora Glover, one of
23 the defendants in the before-stated cause, and who is personally known to me, and who resides in said Wilcox County, Ala., and the said Elenora W. Glover, being duly sworn by me, on oath saith that the foregoing demurrer is not interposed for delay.

ELENORA W. GLOVER.

Sworn to and subscribed before me, March 14, 1873.

BRUTUS HOWARD,
A Justice of the Peace for Wilcox County, Ala.

Filed April 5th, 1873.

N. W. TRIMBLE, *Clerk.*

Demurrer.

In the circuit court of the United States at Mobile, Alabama.

JOHN F. BAILEY, AS ASSIGNEE OF BENJAMIN Glover, complainant, *vs.* NATHANIEL T. GLOVER, ELENORA GLOVER, & Hugh Weir, defendants. } In equity.

The demurrer of Hugh G. Weir, in the bill of complaint called
24 Hugh Weir, one of the defendants to the bill of complaint of John F. Bailey, as assignee of Benjamin Glover against Nathaniel T. Glover, Elenora Glover, and this defendant, filed in equity in the circuit court of the United States, at Mobile, Alabama, for the southern district of Alabama.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill of complaint, and for causes and grounds of demurrer sheweth:

1. First. That the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in said bill or any of said matters.

2. Second. That it appears by the complainant's own showing by his said bill of complaint that the said complainant is not entitled to the discovery or relief prayed by his said bill against this defendant.

25 3. Third. That it appears by the complainant's own showing that the bill in this cause was not filed within two years from the time the said Benjamin Glover obtained his final discharge in bankruptcy.

4. Fourth. That the bill of complaint in this cause is filed by the assignee in bankruptcy of the said Benjamin Glover, and not by any of the creditors of said Benjamin Glover.

5. Fifth. That the bill of complaint in this cause was filed after the expiration of more than two years from the time the said Benjamin Glover obtained his final discharge in bankruptcy, and after the death of the said Benjamin Glover.

6. Sixth. That said bill is multifarious in this, that said bill is exhibited against this defendant and Elenora Glover, together with one Nathaniel T. Glover as a co-defendant, for several and distinct and independent matters and causes, and wherein, or in the greater part thereof, this defendant is in no way interested or concerned, and ought not to be implicated.

7. Seventh. That said bill of complaint was not filed and said suit was not brought by said assignee within two years from the time the supposed cause of action accrued as shown by said bill
26 of complaint.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant does demur thereto, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

S. J. CUMMING,
Solicitors for the def't, Hugh G. Weir.

I, S. J. Cumming, one of the attorneys of said United States court, and solicitor for the defendant, Hugh G. Weir, one of the parties defendant to the foregoing cause of John F. Bailey, as assignee, &c., against Nathaniel T. Glover et al., now pending in equity in the said United States circuit court at Mobile, Ala., hereby certify that in my opinion the said grounds and causes of demurrer are well-founded in point of law, and that said demurrer is not interposed for delay.

S. J. CUMMING,
Solicitor for Hugh G. Weir, one of the defendants.

27 Before me, Brutus Howard, a justice of the peace in and for Wilcox County, Ala., this day personally came Hugh G. Weir, one of the defendants in the above-stated cause, and who is personally known to me, and who resides in said Wilcox County, Ala., and the said Hugh G. Weir, being duly sworn by me, on oath saith that the foregoing demurrer is not interposed for delay.

HUGH G. WEIR.

Sworn to and subscribed before me, March 14, 1873.

BRUTUS HOWARD,
A Justice of the Peace for Wilcox County, Ala.

Filing.

Filed April 5th, 1873.

N. W. TRIMBLE, *Clerk.*

Orders at rules.

JOHN F. BAILEY, ASSIGNEE,
vs.
N. B. GLOVER, ELENORA GLOVER, AND HUGH Weir. } At rules. April 7th, 1873.

This day comes the complainant, by their solicitors, and sets
28 down the cause for argument on the demurrers of the defendants, Elenora W. Glover and Hugh G. Weir, filed in this case, and the complainant moves for a decree pro confesso against Nathaniel T. Glover, and it appearing that the subpœna has been executed more than thirty days on said defendant, and he having failed to plead, answer, or demur to the bill of complaint, it is ordered that the bill be taken as confessed as against him.

N. W. TRIMBLE
Clerk & Master.

Circuit court of the United States for the fifth judicial circuit and district of Alabama. April term, 1873.

At a regular term of the circuit court of the United States for the fifth judicial circuit and district of Alabama, convened at the city of Mobile, in the United States court-room of the custom-house, on the 14th day of April, (being the second Monday of said month,) A. D. 1873, present the Hon. William B. Woods, judge, presiding.

* * * *

29 *Order of court.*

JOHN F. BAILEY, ASSIGNEE OF BENJAMIN Glover,
vs.
NATHANIEL T. GLOVER, ELENORA GLOVER, and Hugh Weir. } In equity.

The decree pro confesso against Nathaniel T. Glover, taken at a rule-day in this cause, for good cause shown is set aside, and leave is granted him to plead, answer, or demur.

Demurrer.

Circuit court United States.

JOHN F. BAILEY, ASSIGNEE,
vs.
NATHANIEL B. GLOVER, ELENORA GLOVER, & Hugh Weir. } In equity.

The demurrer of Nathaniel B. Glover to the bill of complaint of John F. Bailey, assignee, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, in such manner and form as the same are therein set forth and alleged,
doth demur thereto, and for cause of demurrer showeth that
30 the said complainant hath not by his said bill made such a case

as entitles him in a court of equity to any relief against this defendant touching the matters contained in the said bill or any of such matters.

1st. Because the administrator of said Benjamin Glover, deceased, has not been made a party defendant to said bill of complaint.

2nd. Because this bill was not filed within two years from the time the cause of action accrued to said assignee, as is required by section two of "An act to establish a uniform system of bankruptcy throughout the United States, approved March 2nd, 1867."

We certify that in our opinion, the foregoing demurrer of Nathaniel B. Glover, defendant, to the bill of complaint of John F. Bailey, assignee, is well-founded in law, and proper to be filed in the above cause.

TAYLOR & MACARTNEYS,
Solicitors and of counsel for defendant, N. B. Glover.

UNITED STATES OF AMERICA,
Middle District of Alabama:

31 Nathaniel B. Glover, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

N. B. GLOVER.

Sworn to and subscribed before me, at Selma, Alabama, in said middle district, by N. B. Glover, on this 10th day of April, A. D. 1873.

In witness whereof I have hereunto placed my hand and affixed my seal of office the day and year aforesaid.

[SEAL.] HUGH S. D. MALLORY,
United States Commissioner for the Middle District of Alabama.

Filed April 14th, 1873.

N. W. TRIMBLE, *Clerk.*

Circuit court of the United States for the fifth judicial circuit and district of Alabama. April term, 1873.

32 At a regular term of the circuit court of the United States for the fifth judicial circuit and district of Alabama, convened at the city of Mobile, in the United States court-room of the custom-house, on the 14th day of April, (being the second Monday of said month,) A. D. 1873, present the Hon. William B. Woods, judge, presiding.

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FRIDAY MORNING, *April 25th*, 1873.

Court met pursuant to adjournment. Present, the honorable William B. Woods, judge presiding. * * *

JOHN T. BAILEY, ASSIGNEE OF BENJAMIN GLOVER,
vs.
N. B. GLOVER, ELENORA W. GLOVER, AND Hugh G. Weir. } In chancery.

This case coming on to be heard on the several demurrers filed by the defendants, and the same being argued and considered by the court, it

is ordered, adjudged, and decreed that the said several causes of demurrer be overruled with the exception of that of the statute of limitations mentioned and stated in the 2nd section of the bankrupt act, and
33 relied on and assigned by each of the said defendants, and as to this cause of demurrer, assigned as aforesaid, it is ordered, adjudged, and decreed that the same be sustained; and now it is further ordered, adjudged, and decreed that the said bill be dismissed, and that the defendants go hence without day and recover of the complainant their costs in this behalf expended.

In witness whereof I have hereunto set my hand and seal this the 25th day of April, 1873.

W. B. WOODS, *Judge.*

And now the complainant, by his solicitors, and in open court, prays an appeal from the above and aforesaid decree in this case to the Supreme Court of the United States, and the same is allowed on his executing in due form of law an appeal-bond in the sum of five hundred dollars, with good security, and conditioned as the law directs.

In witness whereof I have hereunto set my hand and seal this the 25th day of April, 1873.

W. B. WOODS, *Judge.*

34 Circuit court of the United States for the southern district of Alabama.

JOHN F. BAILEY, ASSIGNEE IN BANKRUPTCY of Benjamin Glover, compl't, *vs.* HUGH WEIR & OTHERS, DEFENDANTS. } In chancery.

Know all men by these presents that we, John T. Bailey and Joel W. Jones, of the city of Mobile, are held and firmly bound unto Hugh Weir, Nathaniel B. Glover, and Elenora Glover, the defendants in the above-entitled cause, in the sum of five hundred dollars to be paid to the said Hugh Weir, Nathaniel B. Glover, and Elenora Glover, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this 12th day of June, 1873.

The condition of this obligation is such, that whereas the above-bounden John F. Bailey hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the southern
35 district of Alabama:

Now, therefore, if the above-named John F. Bailey shall prosecute his said appeal to effect, and answer all costs if he shall fail so to do, then this obligation shall be void, otherwise to remain in full force and virtue.

JOHN F. BAILEY. [SEAL.]
JOEL W. JONES. [SEAL.]

Approved June 19th, 1873.

W. B. WOODS,
U. S. Judge.

Filed June 16th, 1873.

N. W. TRIMBLE, *Clerk.*

36 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

I, N. W. Trimble, clerk of the above-mentioned court, hereby certify that the foregoing pages numbered from one to thirty-five is a full, true, and correct transcript of all the papers and proceedings had in the case, wherein John F. Bailey, assignee of Benjamin Glover, is plaintiff, and Elenora W. Glover, Hugh G. Weir, et als. are defendants, as the same remains of record in my office as such clerk.

In testimony whereof I hereunto subscribe my name, and cause the seal of said circuit court to be affixed, this 6th day of October, A. D. 1873.

[SEAL.] N. W. TRIMBLE, *Clerk.*

(Indorsement on cover:) No. 225. John F. Bailey, assignee of Benjamin Glover, a bankrupt, appellant, vs. Hugh Weir, Nathaniel B. Glover, and Elenora Glover. S. Alabama C. C. U. S. Filed 11th October, 1873.

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